

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 10913 of 2006(Y)

PETITIONERS:

1. SMITHA V.R., H.S.A., ENGLISH,
GOVERNMENT HIGHER SCHOOL, VYTHIRI, WAYANAD.
2. MINI K.B., H.S.A., ENGLISH,
GOVERNMENT HIGHER SECONDARY SCHOOL, THIRURANGADI.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS:

1. THE PRINCIPAL SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF HIGHER SECONDARY
EDUCATION, THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER, SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT. P1: COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 12-5-2003.
- EXT. P2: COPY OF THE REPRESENTATION SUBMITTED BY THE FIRST PETITIONER DATED 21-11-2005.
- EXT. P3: COPY OF THE REPRESENTATION OF THE 2ND PETITIONER DATED 21-11-2005.
- EXT. P4: COPY OF THE ORDER OF THE 2ND RESPONDENT ISSUED TO THE FIRST PETITIONER DATED 14-3-2006.
- EXT. P5: COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT ISSUED TO THE 2ND PETITIONER DATED 14-3-2006.
- EXT. P6: COPY OF THE ORDER OF THIS HON'BLE COURT IN O.P.NO.31314/2002 DATED 21-11-2002.
- EXT. P7: COPY OF THE STATEMENT INCLUDING THE ANNEXURE -1 FILED BY THE UNDER SECRETARY TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT, DATED 28-11-2002 IN O.P.NO.31314/2002.
- EXT. P8: COPY OF THE STATEMENT FILED BY THE SECOND RESPONDENT IN W.P.(C) NO.10899/2004 DATED 30-7-2004.
- EXT. P9: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C) NO.11940/2004 DATED 24-8-2005.

RESPONDENT'S EXHIBITS:

- EXT. R2(A): COPY OF THE COUNTER AFFIDAVIT FILED IN WP(C) NO.24799/04.

/TRUE COPY/

P.A. TO JUDGE

JP

S.SIRI JAGAN, J.

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W.P.(C) No.10913 of 2006(Y)

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Dated this the 18th day of December, 2007

JUDGMENT

The petitioners are HSAs in Government Schools. Their grievance in this writ petition is that although they are eligible for appointment by transfer as Higher Secondary School Teacher in the 25% vacancies earmarked for High School Assistants and U.P. School Assistants and L.P. School Assistants they are not being considered for such appointment. The contention is that going by Ext.P7 statement filed by the 1st respondent before this Court in OP No.31314/02 the total number of posts for Higher Secondary School Teachers is both HSST and HSST (Junior) is 710 and 25% of that would be 178. Only 176 persons have been appointed by transfer. Therefore, two more vacancies are available for being filled up by appointment by transfer is the contention raised. According to the petitioners, going by Ext.P1 list, petitioners are sl. nos. 59 and 60 and persons up to serial number 58 have been appointed as Higher Secondary School

Teacher in the 25% quota. The petitioners therefore, seek following reliefs:

- "i) issue a writ of certiorari calling for the records relating to Ext. P5 and P6 and quash the same.
- ii) issue a writ of Mandamus directing the 2nd respondent to appoint the petitioners from the Ext.P1 List within a time schedule to be fixed by this Hon'ble Court."

2. The second respondent have filed a counter affidavit stating that the total number of posts of Higher Secondary School Teachers available as on 20.9.07 were 706 and 25% quota out of that the same would be 176. In respect of Ext.P7, the 2nd respondent have filed an additional counter affidavit in which it is stated that what is stated in Ext.P7 is incorrect and the actual vacancies available in the 25% are only 176. The counsel for the petitioner would want to discredit the statement by pointing out that in the first counter affidavit in paragraph 5, they have stated that 2 lists were prepared on the same date i.e. in respect of vacancies which occurred till 31.7.02 and for vacancies which occurred between 1.8.02 to 14.10.03 and nobody was given appointment as HSST/HSST (Junior) in English from these Schools as there were no vacancies in English that arose during this period, in R2(A) produced along with additional counter

affidavit in W.P.(C) No.24799/04 the statement is that during the same period four retirement vacancies occurred of which three vacancies were reported to the Public Service Commission.

3. I have considered the rival contentions in detail. The petitioner's have no contention that the respondents have any particular motive in reducing the number of posts to 706 from 710. The 2nd respondent who is a the responsible officer has filed a counter affidavit to the effect that actual number of posts is only 706. He has also explained the discrepancy in Ext.P7. Further, the petitioner himself has along with this reply affidavit produced Ext.P8 statement filed by the 2nd respondent in W.P. (C) No.10899/04 in which also the number of posts under 25% category is given as 176. As such I have no reason to now disbelieve the statements in the counter affidavit that the number of vacancies in the 25% category come only to 176. That being so, I do not find any merit in the contentions in the writ petition and accordingly, the same is dismissed.

**S.SIRI JAGAN,
JUDGE**